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THE LEGAL LIABILITY OF PUBLIC ADMINISTRATION AUTHORITIES FOR HUMAN RIGHTS VIOLATIONS

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CONCEPTUAL REFERENCE POINTS OF RESEARCH

The topicality and importance of research. The issue of the legal responsibility of the public administration authorities for human rights violation has become an extremely important and current one, especially in the context of radical modernization of the administrative legislation of the Republic of Moldova (through the adoption in 2019 of the Administrative Code of the Republic of Moldova) in order to make it "more friendly to citizen".

The main objective pursued by the reformers of the administrative legislation was focused in particular on the normative guarantee of respect for human rights in the administrative activity of the public authorities and institutions of the state, especially through the detailed regulation of administrative activity, the administrative procedure, the preliminary procedure and the administrative litigation procedure.

Despite the efforts made in these directions, the segment of legal liability of public authorities has been largely neglected. In this chapter, the Administrative Code of the Republic of Moldova [1] is limited only to general statement, in art. 35, of the forms of legal liability (criminal, contravention, civil and disciplinary) "of public authorities and the persons who represent them ... for non-execution or improper execution of the administrative activity, in accordance with the law".

From our point of view, even if the legislator invokes these forms of legal liability for public authorities and for "persons who represent them", it is unclear whether some of them can be attributed to public authorities (as legal persons under public law). It's the case of criminal liability, disciplinary liability and contravention liability. On the other hand, it is undeniable that public authorities are liable for civil liability, as the aspect is confirmed in art. 53 para. (1) of the Constitution of the Republic of Moldova [3], which enshrines the right of the person injured by a public authority, as well as in art. 2006 of the Civil Code of the Republic of Moldova [2] ("Responsibility for damage caused by a public authority or a person with a responsible position"). The only problematic aspect in the given context concerns the legal nature of the patrimonial (civil) liability of public authorities, because contrary to its designation in the legislation as "civil", the administrative doctrine intensively promotes the idea of distinct legal nature of this liability - as being one administrative-patrimonial.

Starting from these aspects, we believe that theorists face at least two important tasks: the first - identifying the forms of legal liability that public authorities are liable to (in their capacity as legal entities under public law) and the second - clarifying the legal nature of patrimonial liability of public authorities - in the sense of whether it is civil or administrative.

In the hypothesis that public authorities are not subject to criminal, contravention and disciplinary liability (which we set out to prove in the doctoral thesis), we ask ourselves rhetorically if these legal subjects can only be held civilly liable?!

To answer this question, we consider it necessary to take into account the provisions of art. 224 of the Administrative Code of the Republic of Moldova in which the powers of the administrative litigation court are established for situations in which it finds the illegal and harmful nature of the disputed individual administrative act, the illegal refusal of the public authority to issue an individual administrative act or to carry out an action, inaction or tolerance or if it finds that the public authority has issued individual administrative acts and/or regulations struck by nullity.

These powers of the administrative litigation court suggest the idea that for "non-execution or improper execution of administrative activity, under the law" (in other words, for illegal administrative activity) public authorities can bear certain negative consequences (provided in the cited article), imposed through the coercive force of the state (administrative litigation court). The most important thing is that these negative consequences (called in other branches of law "sanctions") can only occur if the administrative litigation court is referred by legal subjects (natural and legal persons) who invoke the infringement of their rights by administrative activity contested illegality.

Therefore, from the given perspective, we believe that a distinct form of legal liability of public authorities is quite clearly defined, which can arise in cases where the rights of the administrators are harmed through illegal administrative activity. In its essence, this is a legal liability for illegal administrative activity that harms rights (in other words – legal liability for harming human rights).

We consider the theoretical-practical value of this institution to be indisputable. From a theoretical point of view, the doctrine must research its essence and particularities quite well in order to determine and argue the legal nature of this form of legal liability (depending on branch affiliation), as well as to outline the concrete implementation mechanism. From a practical point of view, however, undoubtedly, this institution is of particular interest especially for administrations injured in their rights by the illegal administrative activity of public authorities, as it would allow them to know and effectively apply the mechanism for defending their injured rights and of holding the public authorities accountable.

All the stated motivated us to show interest and research the given subject, especially from the perspective of the injured administrators, aiming for the scientific results obtained to be useful first of all to them, and then to the public authorities. For the latter, we believe that the doctoral research will serve as a sure benchmark in the relations carried out with administrations, which will allow them to be cautious both in terms of compliance with legality in the administrative activity carried out, and in the segment of respect for human rights recognized by law, in special. In the end, we believe that our research can have an important role for the respect of legality and human rights in the administrative activity of public authorities, as well as for the prevention and avoidance of illegal and rights-damaging conduct on their part.

The framing of the topic in international and national concerns, as well as in an inter- and transdisciplinary context. The researched topic is part of international concerns, since the principle of respect for human rights by the state and its authorities is enshrined in the most important international acts, the human right to an effective appeal being expressly regulated (in other words, to defend oneself through legal action) in all cases where his rights have been violated, including "when the violation was committed by persons acting in the exercise of their official functions." The finality of the exercise of this right must involve the legal responsibility of the authorities (officials) who are guilty of violating human rights. Thus, the researched theme fits perfectly into the mechanism of realizing the right to an effective appeal, the right to defence and the right of the person injured by the public authorities, rights that are continuously under the attention of the European judicial courts.

The researched subject is also part of national concerns, especially in the context of the reform of administrative legislation (achieved in 2019 through the adoption of the Administrative Code of the Republic of Moldova), the new legal framework requiring a detailed and deep analysis to outline the theory necessary for its effective and correct application, in the segment of the defence of the rights injured by the authorities and their legal liability.

Importantly, the topic of the doctoral thesis is integrated into the strategic priority IV - *Societal challenges* (strategic direction 1: *Social, educational and cultural innovations for integration and adaptation* - letter h) "strengthening the mechanisms for the protection of human rights and the functioning capacities of institutions of state power in the context of the needs for modernization through development and democratization") of *the National Program in the fields of research and innovation for the years 2020-2023*, approved by the Decision of the Government of the Republic of Moldova no. 381/2019 [5]. This fact once again underlines the topicality and special importance of the topic selected for doctoral research.

The issue of the legal responsibility of public authorities for the violation of human rights is an interdisciplinary one, as it combines within itself legal institutions from several branches of law and legal science, as follows: *the institution of the guarantee and protection of human rights* (reflected both in the general theory of law, the theory of the protection of human rights, as well as in constitutional law), the forms and methods of defence of human rights (reflected in the theory of the protection of human rights, constitutional law, administrative law and civil law), human rights in the activity of public administration authorities (reflected in constitutional law and administrative law), legal liability and its forms (especially reflected in general theory of law), legal liability of the state, officials and public authorities (reflected in general theory of law, constitutional law and administrative law), administrative activity, its principles and control (reflected in constitutional law and administrative law), administrative procedure, preliminary procedure and administrative litigation procedure (reflected in administrative law and civil procedural law).

As a result of its complexity and interdisciplinary character, the topic proposed for research requires a transdisciplinary approach, in order to succeed in rendering as faithfully as possible its essence and particularities, an absolutely necessary and useful moment for a correct and effective application of the legal institutions that it includes.

The purpose of the study (general objective). Given the special significance of the stated moments, in the doctoral thesis, starting from the scientific results already recorded, we proposed to carry out an analysis of the specialized doctrine and the legislation in force in the matter of respect for human rights in the administrative activity and the legal responsibility of public administration authorities in order to identify and argue the concrete forms of liability of these subjects, especially for the violation of human rights, the identification of gaps and doctrinal and normative deficiencies in the field, aiming, in the end, to consolidate the legal theory in the matter and to optimize (through solutions and recommendations) related legal framework.

To achieve this goal, the following **research objectives** were drawn:

1) evaluation and appreciation of the degree of theoretical research on the issue of guaranteeing respect for human rights in administrative activity, as well as the responsibility of public administration authorities, including for the violation of human rights;

2) the analysis of the normative framework in force in order to assess the mode of regulation and guarantee level of respecting human rights as a fundamental principle of public administration;

3) the analysis of the essence and forms of administrative activity in order to identify ways of harming human rights by public authorities through the administrative activity carried out;

4) identifying and arguing the forms and methods of defending the rights injured by public authorities as a necessary premise for holding them legally responsible;

5) the analysis of the institution of legal liability in public law, in order to delimit the legal liability of the state from that of public authorities (including the liability of civil servants);

6) identification and analysis of the forms of legal liability to which public authorities are liable, including for the violation of human rights;

7) the analysis of patrimonial liability of public authorities for prejudicing administrators in order to argue its patrimonial (civil) nature (expressly provided by law) to the detriment of its administrative nature (supported by administrative doctrine);

8) the analysis of administrative liability, based on its essence, particularities and elements, in order to argue the existence of a genuine administrative liability of public authorities that arises in cases where they violate the law in the administrative activity carried out, a fact that may harm the rights of the administrators.

The research hypothesis starts from several important questions to which answers are formulated in the doctoral thesis: a)Which forms of legal liability (from the classical ones) can be applied to public authorities? b)What form of legal liability can be applied to public authorities for the illegal administrative activity carried out? But for that of harming human rights (administrative) through such activity? c)What sanctions can be applied to public authorities, including for the violation of human rights through illegal administrative activity? d)Does the administrative liability of public authorities exist and is it possible? How does the administrative liability of public authorities differ from their patrimonial liability? e) How can administrations defend their rights damaged by illegal administrative activity by public authorities? f) What is the mechanism (procedures) for holding public authorities legally responsible for the violation of human rights through illegal administrative activity?

Methodological support. To achieve the purpose and objectives of the study, several scientific research methods were applied, as follows:

- *the dialectics method*, the application of which allowed the analysis and discussion of contradictory arguments, in order to discover the scientific truth in the researched matter, as well as to elucidate the legitimacy of the interaction, interdependencies and development of the studied phenomena;

- *the logical method* (and its analysis and synthesis procedures), the application of which allowed the elucidation of the essence and particularities of the analyzed institutions and the formulation of the definitions of key notions, findings, conclusions and recommendations;

- *the historical method* with the help of which it was possible to outline the route taken by the responsibility of the state and its authorities in its evolution and specify its particularities from the contemporary period;

- *the comparative method*, thanks to which the comparative approach of theoretical visions from different scientific areas was achieved, as well as the comparison of the abrogated national normative framework with the new one in the field;

- *the systemic method* was applied especially in the context of studying normative acts relevant to the issue and systemic interpretation of their provisions.

The doctrinal support of the research mainly included a series of scientific works, in which different aspects of the investigated subject are addressed, works signed by renowned authors:

a) autochthonous (such as: Gh. Costachi, V. Guțuleac, D. Baltag, M. Diaconu, M. Orlov, Șt. Belecciu, P. Railean, V. Cobîșnean, V. Micu, I. Muruianu, A. Dastic, E. Moraru, T. Stahi, L. Lavric, I. Jimbei, V. Zubco, O. Țurcan, T. Crugliţchi, O. Marian., Iu. Cernean, I. Iacub, I. Creangă, A. Baurciulu, etc.);

b) Romanians (such as: A. Iorgovan, T. Drăganu, L.R. Boilă, L. Pop, L. Dogaru, A.D. Dogaru, D.C. Dragoș, A. Trăilescu, D. Apostol Tofan, T. Grigoraş, O. Puie, V.I. Prisăcaru , M. Preda, R.N. Petrescu, A. Mocanu-Suciu, etc.) and

c) Russians (such as: Малько А. В., Кушхова Б.З., Милушева Т.В., Филатова А.В., Поляков С.Б., Савин В. Н., Серебрянников В.В., Колосова Н .М. etc.).

In parallel with the theoretical foundation, a wide range of national (consisting of the Constitution, legislative and normative acts) and international (consisting of conventions, declarations, pacts and protocols of an international and European character) was used to carry out the research.

The novelty and scientific originality of the work is determined by the fact that in its content: some aspects little researched in the doctrine are discussed, such as: the institution of legal responsibility of public authorities in general, the institution of administrative responsibility (detached from disciplinary, contravention and patrimonial responsibility), the institution of the administrative offense (separate from contravention offense and disciplinary offence) etc.; the provisions of recently entered into force normative acts with an impact on the subject are interpreted and analysed; a distinct view on the patrimonial liability of public authorities is proposed; it is argued the need to recognize the existence of administrative liability of public authorities (including that for the violation of human rights) with distinct administrative sanctions; the need to circumscribe the patrimonial liability and the administrative liability of public authorities for the violation of human rights in the concept of liability in administrative litigation is demonstrated; relevant conclusions and recommendations are formulated for the solution of an important scientific problem within the theory of domestic administrative law.

The obtained results that contribute to the solution of an important scientific problem reside in substantiation of the theory of legal liability of public authorities for the violation of human rights, a fact that allowed the identification of the concrete forms of legal liability to which these subjects of public law (administrative and patrimonial) are liable, as well as clarifying the applicable procedure and sanctions for the violation of human rights, moments indispensable to the creation of the theoretical basis necessary for the knowledge of the field and, as a result, the optimization of the related legislation and the mechanism of its effective application.

Approval of results. The work was developed within "Stefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova, Doctoral School of Criminal Sciences and

Public Law, being examined in the meeting of "Public Law, Border Security, Migration and Asylum" Department (within the Academy) and in the Scientific Profile Seminar (from the Legal, Political and Sociological Research Institute of Moldova State University).

Publications on the thesis topic – 7 scientific works (5 articles in specialized scientific journals and 2 communications at national and international scientific forums), which add up to a total of 6.7.a. p.

The volume and structure of the work. The thesis is structured according to the purpose of the research and outlined objectives, and includes: - *introduction* - which inserts an argumentation of the topicality of the researched theme and its scientific innovation; - *three chapters* - in which the fundamental aspects related to the detailed disclosure of the purpose and objectives stated in the introduction are studied; - *general conclusions and recommendations* - which insert the important scientific results obtained as a result of the conducted investigations and the rigorous proposals for optimizing the identified problems; - *bibliography* - represents the documentary and doctrinal support of the thesis, consisting of 330 sources.

CONTENTS OF THE DESSERTATION

Chapter 1, entitled ***Analysis of research state on the responsibility of public administration authorities for human rights violations***, includes a review of studies focused directly or tangentially on the issue of guaranteeing respect for human rights in administrative activity, as well as the responsibility of public administration authorities, including that for human rights violations , finally aiming evaluation and appreciation of scientific research degree of the problem in contemporary doctrine.

In the first section (***1.1. Scientific interest in the respect of human rights as a requirement of public administration),*** the main attention is focused on the studies carried out in the field of respecting human rights as a fundamental requirement of public administration.

In particular, it is emphasized that the theoretical-methodological foundation of the doctoral research, in the given chapter, is formed by the scientific studies that developed such important aspects of the subject as: the value of human rights in the rule of law and their guarantee (signed by C. Stere, E. Aramă, Creangă I., Gurin C., Drăganu T., Costachi Gh., Cernean Iu., Marian O., Moroşan I., Avornic Gh., Catan A., Muruianu I., Iacub I., Chiper N., Deleanu I., Sandu V. etc.); the forms and methods of defending human rights, including in relation to public administration (signed by Marinică E., Prisac Al., Drăganu T., Creangă I., Gurin C., Popa V., Cârnaț T., Apostol Tofan D. etc.); the essence and component elements of the administrative activity (signed by Negulescu P., Alexianu G., Orlov M., Prisăcaru V.I., Creangă I., Belecciu Șt., Vedinaș V., Petrescu R.N., Trăilescu A., Guțuleac V., Drăganu T ., Ionescu R., Apostol Tofan D., Brezoianu D., Nichita R., Bejenari V., Condrea T., etc.); ensuring the legality of administrative activity of public authorities, controlling the activity of public administration and ensuring human rights within it (signed by Pogoneţ G., Raţa S., Guznac V., Romandaş N., Antoci A., Iacub I., Chiper N., Diaconu M., Miliș T., Mocanu V., Ghereg V., Baurciulu A., Manoliu M. etc.); the involvement of justice in the defence of human rights harmed by the authorities (Guzun C., Marian O., Cernean Iu., Cobîşnean V., Belecciu Şt., Zubco V., Pascari A., Creţu Gh., Stratulat D., Costachi Gh., Diaconescu M.-B., Dastic A., Crugliţchi T., Orlov M. etc.); the responsibility of public administration and civil servants

(Negulescu P., Alexianu G., Orlov M., Prisăcaru V.I., Creangă I., Belecciu Șt., Vedinaș V., Petrescu R.N., Trăilescu A., Guțuleac V. etc.) etc.

On the same note, attention is drawn to the fact that the last reform in the matter of administrative justice, carried out by adopting *the Administrative Code of the Republic of Moldova* (entered into force in 2019), has aroused a new interest in the administrative activity of public authorities and the control exercised on it. The new conception of administrative legislation has raised a number of problems in relation to the interpretation and application of its rules. Despite this fact, the number of scientific works in which they are studied and developed are relatively few (among them, those signed by Țurcan O., Iacub I., Negru A., Jimbei I., Zubco V., Țurcan L. etc.). The problematic aspects recorded by the authors cited in their works of course require analysis, explanations and appropriate solutions, even if in essence, in some places, they represent only some ambiguities generated by the new conception of administrative legislation, hardly compatible at the moment with the mentality of our society. In the end, all the studies carried out in the field contribute to the achievement of a noble goal - a better knowledge of administrative legislation, an inherent condition for its effective application.

Towards the end of the section, it is emphasized that all the scientific works in the field (including non-nominal ones) present a new importance for doctoral research, constituting an invaluable sure reference for drawing the directions and research objectives of the problem of the responsibility of the public administration for the violation of human rights.

The second section of the chapter (***1.2. Liability of public administration authorities as a subject of scientific research*)** is devoted directly to the evaluation of research degree on the issue of legal liability of public authorities, including that for the violation of human rights, in domestic and foreign specialized literature (especially Romanian).

To begin with, attention is drawn to the fact that, in general, at the level of national doctrine, a well-defined theory in the matter of the responsibility of public administration (public authorities) cannot be attested. However, some important aspects of the issue are quite well addressed in a number of scientific studies, which nevertheless denotes the presence of a certain scientific interest towards it.

The increasingly accentuated presence, in the last period, of liability in relations between the state and the person (as an important principle of a rule of law) determined the outline of the concept of liability in public law, which developed in the form of state liability, at the level of specialized literature, the responsibility of public authorities and the responsibility of civil servants, individually.

Given the fact that the basis of *the theory of state responsibility* is the institution of legal responsibility, developed extensively and multifaceted at the level of the general theory of law, the most important ideas and theses in this chapter were attested in the pages of manuals in the field, signed by such authors as: Mihai Gh., Motică R., Avornic Gh., Baltag D., Guțu A., Craiovan I., Dănișor D.C., Dogaru I., Dănișor Gh., Dvoracek M., Lupu Gh., Negru B., Negru A., Popescu S., Luburici M. etc.

For the most part, theses and important arguments for identifying the institution of legal responsibility within social responsibility, its content, conditions and forms were attested in these works. Obviously, in these studies (and similar ones) the theoretical foundations of both legal

liability in general and the theory of legal liability of public authorities are laid, which motivated the extensive exploitation of the ideas of cited authors for the outline and development of the theory given in the dissertation.

Much more relevant for the research objectives, however, are the publications that address in detail the particularities of legal liability in general (examples being the works signed by: Baltag D., Micu V., Negru A., Chicu O., Prodan M., Costachi Gh., Gherghelegiu T., Muruianu I., Arseni O., Колосова Н.М. etc.). From a brief analysis of the titles of cited studies, a distinct scientific preoccupation in the last three decades for outlining a new form of liability in public law - constitutional liability - has been attested. This is also of obvious interest for doctoral research, especially from the perspective of delimiting constitutional liability by administrative liability, both of which are circumscribed to the field of public law.

Starting from theoretical foundation outlined by the stated studies, as well as from the new socio-legal realities of transition period towards the rule of law and democracy, some researchers paid distinct attention directly to the problem of state responsibility and its forms (among them, it is worth mentioning: Prof. Gh. Costachi, E. Moraru, I. Muruianu, V. Micu, A.B. Malko, Б.З. Kushkhova, Т.В. Милушева, А.В. Филатова, С.Б. Polyakov, В .Н. Savin, В.В. Серебрянников, etc.). A special theoretical-practical significance of state responsibility has motivated researchers to approach it in other contexts, especially with the aim of justifying and substantiating the institution of the responsibility of different public authorities (single or collegial), especially with constitutional status (Gh. Costachi, D. Baltag, V. Micu, Gh. Tatru etc.). The relevance of the works signed by these authors is distinct, as they helped to identify the concrete forms of liability of public authorities, on the basis of which it was possible to define the institution of *liability of public authorities for harming human rights.*

Starting from the fact that the concrete field of doctoral research is administrative law, a distinct attention was paid to **the juridical-administrative doctrine**, to note the forms of legal liability recognized to public authorities within it. Regrettably, it was found that administrative specialists are more concerned with the liability of civil servants, a fact that directly affected the essence and content of administrative liability, seen (in the majority opinion) only as a disciplinary and contravention liability. This aspect motivated a deeper approach to the subject, to see if there is administrative liability apart from disciplinary and contravention liability.

At the same time, starting from the fact that, in the opinion of some researchers, administrative liability also includes a patrimonial liability (called administrative-patrimonial), the paper proposed to clarify this aspect as well, ultimately succeeding in outlining the essence of administrative liability as a distinct form of legal liability (which must be recognized).

Obviously, for this purpose, several scientific works were analyzed, focused specifically on such important aspects as: *liability in administrative law* (administrative responsibility) - works signed by: Orlov M., Vlas C., Botomei V., Apostol Tofan D., Mocanu-Suciu A. etc.; *patrimonial, civil and administrative-patrimonial liability* - works signed by: Adam A.R., Anghel I.M., Deak F., Popa. M.F., Baieş S., Mîțu Gh., Cazac O., Cojocaru E., Bloşenco A., Boilă L.R., Dogaru L., Dogaru A.D., Eliescu M., Jugastru C., Pop L., Popa I.-F., Vidu S.I., Stahi T., Orlov M., Lavric L., Riedl (Voroniuc) I.-C., Tarhon V. Gh., Trăilescu A., Cobîşnean V., Marian O., Iacub I. etc.; *liability in administrative litigation* - papers signed by: Dastic A., Belei E., Pisarenco O. etc.

All the stated studies have made it possible to outline an own (argued) position, related both, in general, to the institution of legal liability of public authorities for the violation of human rights, and, in particular, to the concrete forms of legal liability of these subjects - administrative liability and patrimonial liability - as the main instruments for the defense of human rights harmed by the authorities.

At the end of the chapter, the following relevant conclusions were formulated:

1. In the local doctrine, neither the issue of legal liability of public authorities in general, nor the issue of the liability of these subjects of public law for harming human rights, in particular, knows a suitable approach, especially under the conditions of a new administrative legislation. The studies carried out are a few, fragmented, incomplete and exceed the normative framework in force (the Administrative Code of the Republic of Moldova was adopted relatively recently), which justifies the opportunity to develop research in the field.

2. However, some aspects of the issue of the legal liability of public administration authorities for the violation of human rights are addressed tangentially, especially in the context of studying the legality of public administration activity and tools to ensure it – administrative control and judicial control (administrative litigation). Hence, an absolute necessity of an extensive study focused directly on the essence and particularities of this institution derives, extremely relevant and important, especially in practical terms, for the effective defense of the rights injured by the public authorities.

3. Against the background of extensive doctrinal research into the issue of control exercised over the activity of public administration (administrative and judicial), the conditions of legality, efficiency and their legal effects, the issue of the legal liability of public authorities and the coercive measures that can be applied to them for the illegal administrative activity carried out, in some cases injurious by rights. From the given perspective, at the moment, it is opportune and necessary for the doctrine to reorient itself towards the direct investigation of the institution of legal liability of public authorities as an effect of the judicial (and administrative, why not?) control exercised over their administrative activity. This new research perspective would allow a better knowledge of the issue in question and the adjacent aspects with which it has tangents.

4. The issue of legal liability of public authorities for the violation of human rights is closely related to the issue of the rights of the person injured by public authorities. Given the fact that both problems are sides of one and the same coin, it becomes clear: knowledge of one necessarily implies knowledge of the other. Moreover, in our opinion, only by starting from the issue of the rights of the person injured by the public authorities can we arrive at the identification and clarification of liability forms. From the given perspective, one of the main directions of the doctoral research was designed towards the institution of guaranteeing human rights respect in the administrative activity and the problem of defending the injured rights forms and methods.

5. The issue of liability forms of public authorities for the violation human rights must be viewed, first of all, from the perspective of the sanctions (coercive measures) that can be applied to these subjects and, secondly - of the procedures that must be followed by law as forms and methods of defending the rights injured by the authorities.

6. In the legal doctrine (mainly administrative) the most developed is the legal liability of civil servants. In recent years, the theory of legal liability of the state has also begun to develop

(especially in the context of the theory of constitutional liability), while the legal liability of public authorities (as legal entities under public law) has remained totally in the shadows. Respectively, the need for a clear and well-argued theoretical delimitation of the forms of legal liability to which the stated subjects are liable is obvious.

7. The most serious is that in the theory of administrative law, the authors omit to clearly delimit the legal liability forms for which civil servants are liable from liability forms applicable to public authorities (even if they sporadically state that public authorities are also subjects of liability). In our opinion, there is a serious theoretical gap in the field, proposed to be remedied by the doctoral research.

8. The fact that administrative specialists are more concerned with the liability of civil servants has directly affected the essence and content of administrative liability in general as a legal institution. In the majority opinion, this is only seen as integrating within itself disciplinary (administrative-disciplinary), patrimonial (administrative-patrimonial) and contraventional (administrative-contraventional) liability. This aspect led us to ask rhetorically if there is any administrative liability outside of them and to formulate a reasoned answer.

9. Starting from the fact that in the theory of administrative law from the Republic of Moldova, contraventional liability is no longer a component of administrative liability (as a result of the adoption of the Code of Contraventions of the Republic of Moldova and the establishment of contraventional law as a distinct branch of law), and in European law the phenomenon of contravention is embedded in that of criminality, it is evident that this form of legal liability is not of interest for doctoral research. Instead, another situation is attested in the case of patrimonial liability as a component element of administrative liability. It is an institution that presents a special scientific interest, since the liability is a reparative one, being applied in cases where the administration damages the administrations (a fact that directly involves harming their rights). On the other hand, the theoretical interest in this subject is also conditioned by the fact that, until now, it has not been possible to obtain a doctrinal consensus regarding the legal nature of patrimonial liability from administrative law: administrative or civil. In the doctrine of civil law, this form of liability is considered to be of a civil nature, while a good part of the doctrine of administrative law supports its administrative nature. As a result, it is necessary to take a firm position based on rigorous arguments.

Chapter 2, with the title ***Infringement of rights through administrative activity as the basis of public authority's legal liability,*** represents a debut chapter for the subject addressed.

Starting from the topic of the doctoral thesis: "The legal responsibility of public administration authorities for human rights violations ", we believe that a first important direction of research must look at the violation of rights through administrative activity as a theme for holding the public authorities accountable, because the specification and the analysis of the concrete forms of legal liability of these subjects (at the moment, not explicitly outlined in the specialized literature) must necessarily be anticipated with:

- arguing that, by virtue of the fundamental principle of respecting human rights, currently, public authorities **are obliged** to respect these values and avoid harming them, otherwise, being liable;

- clarification of the category of administrative activity through which it is possible to harm administrators rights by public authorities (at the moment quite controversial, as the local doctrine is overtaken by the administrative legislation in the matter) - necessary aspects are to identify the public authorities actions that can be qualified as harmful conduct and, as a result, contested for the purpose of holding them legally liable;

- specifying the actual content of infringement concept of rights and the ways to achieve it - in order to finally see what accusations can be submitted to guilty public authorities and how the infringed rights can be argued and proven (mandatory condition for the admissibility of actions in administrative litigation);

- identification and explanation of defense means forms of the rights injured by the authorities - to see what rights they benefit from, what measures they can undertake, what procedures citizens injured in their rights have to go through in order to defend them and obtain the withdrawal guilty public authorities to legal liability.

Starting from the mentioned, structurally, the chapter is made up of four sections, focused on the following aspects: respecting human rights as a fundamental principle of public administration; administrative activity as a factor of damage to human rights; the human rights violation through administrative activity and the defense of rights violated by public authorities.

In the first section (**2.1. *Respecting human rights as a fundamental principle of public administration*)**, an analysis of the legal framework in force is included, aiming to assess the extent and manner in which respecting human rights and freedoms as a constitutional value is enshrined and reflected normatively as of the activity principle of the public administration or, implicitly, as a concrete obligation of the public authorities and their officials.

After reviewing the main international acts that guarantee the protection of human rights against the illegal activity of public authorities (such as: *the Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*), the main constitutional norms in the matter are analyzed. As a result, it is found that the role of the *Constitution of the Republic of Moldova* in guaranteeing human rights and freedoms (including in relations with the public administration) is manifested in the fact that the Fundamental Law [16, p. 48-49]:

- recognizes human rights and freedoms as supreme values guaranteed in the state (art. 1 para. (3) of the Constitution), emphasizing the fact that respecting and protecting the person is a primary duty of the state (art. 16 para. (1) of the Constitution). Obviously, such a duty implies not only respecting and protecting the person as a biological being, but also as a legal personality, as a subject of law, as a holder of rights, freedoms and obligations/duties. It is important that the state is obliged to guarantee and ensure the respect of all human rights and freedoms, not only the fundamental ones;

- provides that human rights and freedoms are enshrined in the Constitution and laws (art. 15 of the Constitution), being compulsorily brought to the attention of citizens by the state (art. 23 para. (1) of the Constitution) and are guaranteed to all without any discrimination (art. 16 par. (2) of the Constitution). Regarding this aspect, three important clarifications are necessary: first of all, the human rights and freedoms enshrined in the Constitution, as well as their guarantees, cannot be suppressed in any case by revising the constitutional text (art. 142 paragraph (2) of the Constitution

); secondly, the state has the obligation to regulate all human rights and freedoms at the level of the law and, as a consequence, also at the level of normative acts subordinate to the law (practically, it is the first measure that must be taken by the state in order to ensure compliance human rights and freedoms) and, thirdly, the state recognizes the rights and freedoms legally enshrined in all persons, committing itself not to discriminate against anyone;

- additionally, it recognizes the superiority and direct applicability of international acts in the matter of human rights (art. 4 of the Constitution), in case the domestic laws differ from them. Through this provision, the Fundamental Law recognizes the state's obligation to respect the human rights and freedoms provided by the international acts to which it is a party (regardless of whether or not it enshrined them in domestic legislation);

- also enshrines some concrete levers to guarantee human rights and freedoms, which reside in the prohibition of suppressing or diminishing human rights and freedoms through laws and limiting the grounds for their legal restriction, including through normative acts (art. 54 of the Constitution). In this case, we are talking about concrete prohibitions imposed on the state and its authorities, which must not admit under any circumstances the suppression or diminution of human rights through the laws and normative acts they enact. At the same time, as an exception, the Fundamental Law admits the necessity of restricting human rights and freedoms and establishes concrete limits for the legislator, in order to prevent and avoid attempts to suppress or diminish these supreme values;

- enshrines the assumption of the obligation by the state and its authorities to answer for their injury (art. 53 of the Constitution) as the last constitutional guarantee of the state in order to respect human rights and freedoms. We consider it to be the most important guarantee, since its inefficiency is likely to reduce the other guarantees and obligations assumed by the state for this purpose.

Further, the research is oriented towards the problem of reflecting the principle of respecting human rights in the legislation that develops the constitutional text, namely: *Law regarding normative acts no. 100/2017 (*which enshrines the principle of respecting fundamental rights and freedoms in the legislative and normative activity of the state); *Law on the Government no. 136/2017* (which enshrines such important principles in the matter as: the principle of legality and the principle of protecting human rights and freedoms); *Law on the specialized central public administration no. 98/2012* (which stipulates the principle of legality and the principle of efficient service to citizens); *Law on public office and civil servant status no. 158/200*8 (which emphasizes the principle of legality and the principle of equality and non-discrimination) and *the Law on the status of persons with positions of public dignity no. 199/2010* (in which only the principle of legality is enshrined).

Based on the provisions of the cited normative acts, it can be deduced that the obligation to respect human rights by public authorities is both expressly enshrined (in some of them), in the form of a distinct principle (respecting human rights), and, implicitly, integrated into the general principle of legality. In addition, the assumption of responsibility for respecting these values is mediated by the formality of the oath, mandatorily submitted by civil servants and public officials upon taking office.

The last normative act analyzed under the stated aspect is the *Administrative Code of the Republic of Moldova,* considered to be the most important normative act from the administrative

legislation that guarantees respecting human rights and freedoms, not only in the activity of the public administration authorities, but also in courts specialized in litigation administrative. Respectively, the common principles (legality, equal treatment, impartiality and good faith) and special principles of the administrative and administrative litigation procedure (proportionality, security of legal relations, motivation, comprehensibility and transparency and liability) are analyzed.

The main attention is focused on the principle of liability, enshrined in art. 35 of the AC of the RM, in which both forms of legal liability for which public authorities and persons are liable (criminal, contravention, civil and disciplinary), as well as the basis of liability - "non-execution or improper execution of the administrative activity, according to the law". The important thing is that through this norm, the legislator recognizes the quality of public authorities to be liable for legal liability. However, the cited norm also raises important questions, such as: how fair is it for public authorities to be subject to the same forms of legal liability as "the natural persons who represent them"? What would be the concrete form of legal liability that can arise for non-execution or improper execution of the administrative activity, under the law? Given the fact that the clarification of these dilemmas is important for the objectives of the doctoral research, the answers to the stated questions are formulated in the content of the third chapter of the paper, dedicated exclusively to the problem of the responsibility of public authorities.

The second section of the chapter (**2.2. *Administrative activity as a factor that harms human rights*)** is dedicated to the detailed analysis of administrative activity, based on the doctrine and legislation in force, aiming to argue the forms of manifestation of public administration that harm rights. The importance of the subject is both of a theoretical nature (in doctrine, it being rather little researched), and of a practical nature, since in the preliminary and administrative litigation procedure the petitioner/complainant is obliged to demonstrate/prove the illegal and harmful nature of the administrative activity disputed [13, p. 256-257].

Reflecting on the detailed approach to the forms of the public administration manifestation (especially in the Romanian doctrine), attention is drawn to the way they are enshrined in the administrative legislation in force. As a result of comparing the doctrinal and legal definitions, it is found they differ, the explanation being found in the fact the doctrine is of French inspiration, and the normative framework in force – of German inspiration [13, p. 266].

In conclusion, it is emphasized that, along with administrative acts, both real acts and administrative operations have a potential harm. In other words, in all these forms of administrative activity, "abuses on the part of the executive power" [4, p. 43] can be admitted, which can harm the administrations. Additionally, as a result of the corroboration of the abrogated legal norms with the new ones, it was found [13, p. 267] that, if prior to the entry into force of the Administrative Code of the Republic of Moldova, the administrative act and non-resolution in the legal term of a request, then it currently admits the damage to these values is possible through any administrative activity (of the four stated and defined in the code), thus recognizing the right of injured persons in all cases to address the authorities and the court for defence of administrative litigation. This approach is welcomed, as it denotes a wider legal-administrative and judicial protection of the rights of individuals in their relations with public authorities, as well as more possibilities of holding them legally accountable.

Beyond this, as a result of the analysis of a case, it is deduced the erroneous qualification of the administrative activity forms of public authorities can have quite undesirable consequences, such as the declaration of the inadmissibility of the action, which marks the blocking (termination) of the defence process of the rights allegedly damaged by the allegedly illegal administrative activity and, as a result, the impossibility of holding the guilty public authority legally liable. These aspects speak quite clearly about the necessity and importance of the fundamental research of the institution of administrative activity in the native area, on all its four dimensions [13, p. 266], in order to develop a fundamental theory that will serve as a relevant guide and a concrete benchmark of orientation for the correct qualification of public authorities manifestation forms (administrative activity), which should guide the administration, the citizens, as well as the courts, in the process of defending the rights damaged by the public authorities and bringing them to legal responsibility.

The third section of the chapter (***2.3. Violation of human rights through administrative activity)*** is devoted directly to the problem of violation of rights through administrative activity, seen as being equally current and important, from a double aspect: theoretical and practical. From a theoretical point of view, this is little researched in specialized literature, and from a practical point of view, the infringement of rights through administrative activity (proved and argued in the appropriate way) represents, first of all, the only mandatory condition for triggering the preliminary procedure (according to art. 166 of the AC of the Republic of Moldova) and, secondly, one of the two mandatory conditions for filing a judicial action in administrative litigation (art. 189 of the AC of the Republic of Moldova), within which the guilty public authority can be held accountable.

Starting from of the concept of subjective law analysis and its content, it is concluded that the citizens' rights in relations with the public administration include prerogatives expressly recognized by law regarding the conduct they can have towards the public authorities and the conduct they can request from these, which becomes a **correlative obligation**, for the execution of which citizens can call upon the coercive force of the state if necessary. The most important thing is the rights asserted before the public authorities are expressly provided for by law (this point is emphasized in art. 17 of the AC of the Republic of Moldova), a fact serves as the legal basis for the existence of **correlative obligations** of the public authorities to respect and satisfy them according to law. At the same time, with the entry into force of the Administrative Code of the Republic of Moldova, public authorities are obliged to satisfy and respect not only substantial rights of citizens (substantive law), but also procedural rights (recognized within the administrative procedure and preliminary procedure), in otherwise, they can be held legally liable with the help of the coercive force of the state (directly by the courts specialized in administrative litigation).

Regarding the forms of human rights violation in the administrative activity, after a brief analysis of the notion of injured right, in terms of the violated right and disputed right, it is concluded that the violation of rights through administrative activity can take the following forms [13, p. 267]: *non-satisfaction (non-recognition, ignoring) of the person's right provided for by law*; *the cancellation by the authority of the person's right recognized by law* or *the illegal limitation/restriction of the exercise of the person's right recognized by law*.

In conclusion, it is reiterated the absolute necessity to develop in the local doctrine the problem of the violation of human rights through administrative activity, so that there is the

necessary scientific foundation, indispensable for a correct and fair administrative justice, in the interest of litigants.

The last section of the chapter (***2.4. Defence of rights injured by public authorities***) is devoted directly to the mechanism and procedures for the defence of rights injured by public authorities.

The section is initiated with the reiteration of the fact that at the constitutional level the right of the person injured by a public authority is expressly enshrined (art. 53 of the Constitution of the Republic of Moldova), a fundamental right, which is the basis of the defence of the rights injured by authorities, since, as claimed in the doctrine, "is guaranteed by the establishment of a control over administrative acts, but also the state's liability for injuries caused to individuals (through illegal acts or errors of public officials)" [9, p. 589], both measures should be requested by the injured person. In essence, this fundamental right gives people certain prerogatives, faculties that they can exercise in order to defend their rights damaged by the authorities. Obviously, for a better understanding of the mechanism for defending these rights, it is necessary to analyse the forms and methods of defending rights in general, in order to finally identify those forms and methods that the person can use in the situation his rights are harmed in by the authorities.

Regarding the defence of rights forms, it is emphasized that they can be jurisdictional, carried out by certain subjects provided by law, according to predetermined and non-jurisdictional procedures - carried out by the owners of the violated/contested rights. The category of jurisdictional forms includes: private form, administrative form, mixed form and judicial form. Even if the judicial form is the most important, effective and decisive, still it cannot substitute the other forms of defence, sometimes being accessible according to the law only under the conditions in which other forms of defence are completed. The non-jurisdictional form of subjective rights defence has limited applicability, its legal regime being strictly determined, and exceeding the limits is sanctioned.

Regarding *the methods/means of defending rights*, they are expressly provided in art. 16 of the Civil Code of the Republic of Moldova (with the marginal name - *Methods of civil rights defence*). From the content of this article, it can be seen the defence methods can be equally of two categories: jurisdictional methods and self-defence methods (based on the right to self-defence). Starting from this, it is emphasized that self-defence methods are not allowed if the rights are violated by public authorities, situations for which only form and jurisdictional methods of defence are valid.

Having analysed the forms and methods of defending the subjective rights injured by the authorities, it is stated at the beginning that they are substantiated by several normative acts, including the Administrative Code of the Republic of Moldova - as the main normative act in the matter of relations between public and private authorities.

Regarding the defence form, it is reiterated that in the analysed case the jurisdictional form of defence of injured rights is applicable, which includes two sub-forms*: administr*ative (called in the doctrine and administrative appeal) *and judicial* (called administrative litigation). Both sub-forms of defence are guaranteed by such fundamental rights as: the right to petition (provided in art. 52 of the Constitution of the Republic of Moldova) and free access to justice (consecrated in art. 20 of the Constitution of the Republic of Moldova). These constitutional rights allow and ensure both non-contentious (alternative) and contentious (judicial) defence of the rights damaged by the

authorities, in the latter case with the possibility of holding the public administration authorities legally responsible for the abuses admitted in relation to the administrations.

Regarding *the methods of defending the rights damaged by the authorities*, it is specified that they can be deduced both from the constitutional text (art. 53 paragraph (1) of the Constitution) and from the provisions of the civil law (art. 16 of the Civil Code of RM) and administrative (art. 162 and art. 206 of the Administrative Code of the RM). As a result of the comparative analysis of the cited norms, several divergences are found that require normative remedies.

Generalizing on the normative provisions enunciated/analysed, it is found that the methods of defending the rights injured by the authorities can consist in: a) the annulment of illegal administrative acts, including the declaration of the nullity of administrative acts (through which it is possible to obtain the suppression of actions that violate the right or the danger of its violation is created or the situation prior to the violation of the right is restored etc.); b) obliging the authority to issue favourable administrative documents (through which rights can be recognized, the existence or non-existence of legal relationships established, payment of compensation for the damages caused etc.); c) obliging the authority to carry out actions/inactions or to tolerate actions/inactions (through which the execution of favourable administrative acts can be obtained).

In the end, it is mentioned that the importance of identifying these *methods of defending the rights injured by the authorities* is a special one, since, it is possible to identify the concrete forms of legal liability to which the authorities are liable, in cases they admit abuses in administrative activity, which harms administrations.

Chapter 3, entitled ***Forms of legal liability of public authorities for harming human rights***, is a final chapter, dedicated to the essence and content study of legal liability of public authorities (starting in particular from the theory of state/public power liability) - the second important direction of doctoral research.

From the previous chapter it was seen that in order to reach the administrative court (competent and responsible for applying liability to public authorities), the citizen must go through several procedures, exercise some rights and fulfil various mandatory legal conditions. The positive finality of the effort to defend the rights injured by the public authorities and to hold them to legal responsibility depends on this.

Given the fact that administrative legislation does not operate with the concept of legal liability (not expressly regulating the institution of legal liability of public authorities, but only the principle of liability), identifying the concrete forms of legal liability to which these legal subjects are liable, without a detailed analysis of the theory and the legislation in force, it is impossible.

Aware of this and starting from the scientific achievements recorded so far (reflected in chapter I of the work), in the last chapter (basic for the work), it was proposed:

- the origin and evolution elucidation of the idea of *the state and its authorities responsibility*, as an important premise for understanding the meaning and distinct particularities of the given institution today;

- analysis of the institution of *legal liability in public law*, in order to delimit the *legal liability of the state from the legal liability of public authorities* (including the legal liability of civil servants);

- identification and analysis of the *forms of legal liability of public authorities*, including the violation of human rights: *administrative liability* and *patrimonial liability*;

- analysis of the *patrimonial liability of public authorities* damages caused by administrative activity in order to argue its patrimonial (civil) nature (provided by law) to the detriment of its administrative nature (supported by administrative doctrine);

- the investigation of *administrative liability*, based on its essence and particularities, as well as *administrative wrongdoing*, in order to argue the existence of a genuine *administrative liability of public authorities* that arises in cases where they violate the law in the administrative activity carried out, a fact that can harm rights of administrators too;

- arguing the possibility and necessity of integrating both forms of legal liability of public authorities in the concept of *liability in administrative litigation*.

In accordance with these objectives, structurally, the chapter is made up of four sections, the most important aspects addressed being: *the origin and evolution of the idea of public administration responsibility* (starting from the first ideas attested in history and ending with the contemporary stage), the *forms of legal liability responsibility of public authorities* (issues focused on the theoretical basis of the liability of public authorities, the constitutional basis of the liability of the state/authorities and the forms of legal liability of public authorities), the *patrimonial liability of public authorities* (following, in particular, the substantiation of the civil legal nature of the patrimonial liability of public authorities to the detriment of the administrative legal nature of this form of liability) and *the administrative liability of public authorities* (compartment which mainly includes an analysis of art. 35 of the *Administrative Code of the Republic of Moldova*, which establishes the basis for the legal liability of public authorities, following the argumentation of the idea that this is an administrative responsibility, distinct from the traditional understanding promoted in the doctrine).

The first section of the chapter (***3.1. The idea of public administration liability: origins and evolution***) includes a review of main stages and historical events (from different geographical areas) shaping the theory and practice of holding the state and authorities to legal responsibility. In particular, the fact that "till the 19th century, the public power was considered, in principle, legally irresponsible, a concept based on the idea of the sovereignty of the state, which could not be responsible for the acts of its agents" [8, p. 297]. In its subsequent evolution, the cardinal turning point of this problem was the process initiated by bourgeois revolutions in Europe, taken over by other nations, which led to the emergence and development of such a phenomenon as the political, legal and socio-moral responsibility of the power towards of society and person [6, p. 104; 7, p. 131-139].

Generalizing on the analysed aspects, it is emphasized [10, p. 32] that the responsibility of the state and its authorities was launched a long time ago, in the context of extensive social revolutions, which practically ruined the principle of the irresponsibility of the state in relation to its citizens. By this, the foundations of the rule of law were laid, as an indispensable tool for the limitation/self-limitation of power, a fact resulting in the reconsideration of society's values and the substitution of state interests with the recognition and protection of human rights and freedoms. It is important in the context that the rule of law is inherent in the principle of responsibility and liability of the state and its authorities towards citizens, where responsibility has the role of a tool for

preventing human rights damage in the state's activity, and liability - a tool for defence and restoration of injured rights.

Over time, the implementation of this idea by different societies has been diverse. Some have implemented it more successfully, the results being palpable, these representing genuine states of law (as examples serving the most developed European states). Others have limited themselves only to the recognition of the idea and its proclamation in fundamental laws, without a real transposition in practice. Regrettably, this category also includes the Republic of Moldova, which until now is in a continuous process of building the rule of law. In our opinion, we will be able to talk about the completion of this process only when we attest a concrete, functional and effective mechanism for effectively holding the state and its authorities accountable for the violation of human rights, freedoms and legal interests.

The second section of the chapter (3***.2. Forms of legal liability of public authorities***) is devoted directly to the forms of legal liability to which public authorities are liable, starting from the theory of liability of public power, which includes: *liability of the state, liability of public authorities* and *the responsibility of civil servants*" [6, p. 108; 8, p. 51].

From the analysis of the constitutional norms, it was deduced that our constitution established two forms of responsibility of the state and its authorities: political and legal. With reference to legal liability, the most relevant norm is contained in art. 53 of the Constitution of the Republic of Moldova, from which it can be easily deduced that the state is liable for legal liability (according to paragraph 2) for damages caused by judicial errors (admitted in criminal judicial processes), while public authorities are liable in case of damage the rights of administrators (according to paragraph 1). This delimitation made by the constituent is a very important one, as it allows us to distinguish the institution of the state's responsibility from the institution of the responsibility of public authorities, both of which are circumscribed to the responsibility of public power.

Reflecting on the cited norm, it can be concluded that the state is only responsible for causing damage to citizens through judicial errors, which is, by the exponents of the judicial power and the subjects involved in the execution of the act of justice. If the injury and damage are caused by the exponents of the executive power, the public authority guilty of it will be liable [11, p. 130].

It remains unclear who is responsible for the injuries and damages caused to citizens by the legislative authority of the state? In our opinion, just as our state assumed (through constitutional norms) the responsibility for the damages caused by judicial power and authorities that "serve" it (which collaborate closely in the act of justice), it will also assume liability for damages possibly caused by legislative power, through the normative acts it issues. Otherwise, the damages caused by the executive power in the process of organizing the execution and the concrete execution of laws, belong to the responsibility of the public authorities exponent (according to art. 53 paragraph (1) of the Constitution of the Republic of Moldova).

Going directly to the identification of legal liability forms that public authorities are liable to, initially it is reiterated that the Fundamental Law of our state clearly delimits the state's liability from the liability of the public authorities, mainly regulating the patrimonial liability of these subjects, in other words, their obligation to repair the damages caused to the citizens. In addition, from the content of art. 53 para. (1) of the Constitution of the Republic of Moldova, it can be

observed that the persons injured in their rights by the authorities, in addition to reparation of the damage suffered, can also request and obtain the recognition of the right and the annulment of the harmful act. It is clear these measures (once they can be imposed on public authorities) exceed the limits of patrimonial liability. Therefore, an important theoretical question arises: what is the form of legal liability applicable in this case to public authorities? In order to answer, it is first necessary to identify the forms of legal liability to which public authorities are liable in general.

In searching for these forms through the administrative doctrine (as a field of reference), it was found that within the limits of the administrative law theory, the studies focus mainly on the liability of civil servants and very little on the liability of public authorities. In most doctrinal sources, the issue of liability in administrative law is thus focused on the institution of public officials' liability, approached from the perspective of all known forms of legal liability: *disciplinary liability (*as part of administrative liability); *criminal liability*; *contraventional liability* (also called administrative liability) and *civil liability* (also called administrative-property liability).

As a result, the norm contained in art. 35 of the Administrative Code of the Republic of Moldova, according to which: "The public authorities and the natural persons who represent them are responsible, as the case may be, criminal, contraventional, civil or disciplinar for the non-execution or improper execution of the administrative activity, in accordance with the law."

This impossibility of accepting the fact that both public authorities (as legal entities under public law) and "natural persons who represent them" are subject of the same legal liability forms, both the legal basis and the possibility of public authorities should be liable to state forms of legal liability.

As a result of verification the relevant criminal and contravention legal rules it was found that public authorities enjoy criminal and contravention immunity in terms of criminal and contravention liability. It is important to note that public authorities are not subject to disciplinary liability, even if they are personal bodies, this form of liability having distinct particularities incompatible with the specifics of such legal subjects [11, p. 131] (such as, his personal character).

Beyond the denial of criminal, contravention and disciplinary liability of public authorities, the local doctrine argues the existence of another form of legal liability to which they are liable, being the constitutional liability, applicable for the commission of constitutional offences. Without going into details, we consider that such a form of legal liability of public authorities has the right to exist, but it is not relevant for the situation where the authorities harm the rights of individuals through the administrative activity carried out, because in such cases we are in the presence of reports of administrative and not constitutional law (constitutional responsibility being applicable only within legal relations of constitutional law) [11, p. 131].

Generalizing on the forms of legal liability of public authorities, it is emphasized that of the four generally recognized forms of liability (criminal, contravention, disciplinary and civil), public authorities are liable only for civil liability. However, the legal norm contained in art. 35 of the AC of the Republic of Moldova, provides the liability of public authorities "for the non-execution or improper execution of the administrative activity, in accordance with the law". Should it be a form of legal liability distinct from those stated? The answer to this question is formulated in the final part of the third chapter.

The third section of the chapter (***3.3. The patrimonial liability of public authorities***) is dedicated to the oldest, widespread, but also controversial form of legal liability of public authorities, such as *patrimonial liability* (regulated and guaranteed both at constitutional level and at civil law).

Given the fact that this form of legal liability is much discussed in administrative and civil doctrine, its legal nature (civil or administrative) being questioned, initially an attempt is made to clarify this aspect. Having analysed the civil and administrative theories in the matter, it is concluded that the patrimonial liability of the public administration authorities is essentially a civil liability, due to its reparative character. It practically denies the existence of administrative-patrimonial liability as a distinct form of legal liability.

Generalizing the analysed facts, it is emphasized that the patrimonial liability of the authorities for damages caused to those administered by administrative activity carried out can only be of a civil nature, as it is a reparative liability. The specificity that this form of legal liability acquires in the matter of administrative law does not allow it to be recognized as a distinct, independent form of legal liability. In this case, we can only speak of the existence of a distinct legal regime for the application of patrimonial liability in the sphere of legal relations regulated by administrative legislation [12, p. 348].

Moreover, the same can be said about patrimonial liability applied in legal relationships regulated by most branches of law. The fact that in some of them this form of liability was named in a certain way (e.g. in labour law – material liability) does not mean that this has become a form of legal liability specific only to the given branch of law. In each individual case, we are practically in the situation of an adjustment of the legal regime of application of patrimonial liability to the specifics of each branch of law [12, p. 349].

On the other hand, the given position is also confirmed by the fact that the administrative legislation does not expressly enshrine the administrative-patrimonial liability of the public authorities, a fact that can be interpreted as additional proof that patrimonial liability of these authorities is of a civil nature (regardless of the branch of law in which is applied), the principles of its application being enshrined in civil law (which also stipulates the right of state and public authorities recourse). Perhaps the normative framework in question is not detailed enough, but essentially it is important that it exists, being applicable both to the patrimonial liability of the state and to the patrimonial liability of public authorities. In addition, even if over time the administrative legislation has undergone significant changes, we do not currently see a detailed regulation of the patrimonial liability of public authorities and their officials (as hoped in the administrative doctrine over the years), that gives an obvious administrative nature to the institution.

The last section of the chapter (***3.4. Administrative liability of public authorities***) is dedicated to an important aspect of the investigated problem – administrative liability as a distinct form of legal liability of public authorities.

To begin with, it is reiterated that, in the administrative doctrine, the administrative liability of public authorities is not investigated as a distinct subject. This fact led us to assume a certain theoretical risk as initiators of the issue. Moreover, the risk is twofold considering that the very issue of administrative liability, as a distinct form of legal liability on its own, is not definitively defined and clarified. Taking into account these aspects, capitalizing on the scientific achievements reflected

in the doctrine, own vision is presented on the administrative responsibility of public authorities, emphasizing that such responsibility exists and must be recognized.

In general, even if it is considered to be one of the youngest forms of legal liability (especially in relation to civil and criminal liability), however, administrative liability enjoys a broad theoretical approach, accompanied by various doctrinal controversies throughout its entire development.

The first and most important controversy, according to us, which continues to this day, concerns the confusion made between two close legal categories: *administrative liability* (as a liability specific to administrative law) and *liability in administrative law* (forms of legal liability from different branches of law for which the subjects of administrative law are liable). In our opinion, due to this confusion, until now, we cannot talk about the existence of administrative liability as a distinct, independent form of legal liability. As a result, in some definitions from the doctrine of *administrative law*, it can be seen how administrative liability is seen as a combination of forms of legal liability to which subjects of administrative law (in particular, civil servants) are liable, such as *disciplinary liability, contraventional liability* and *patrimonial liability*.

As a result of different opinions analysis expressed in the doctrine, generalizing, it is emphasized that, in the conditions the great majority of administrative doctrinaires recognize that administrative liability includes disciplinary liability and contraventional liability (as subjective forms of liability, based on guilt), based on disciplinary misconduct and contraventional misconduct, indirectly deny the quality of public authorities to be subject to administrative liability.

It is obvious that the contemporary doctrine of administrative law must already definitively clarify the status of administrative liability as a distinct form of legal liability specific to this branch of law (on its own in relation to patrimonial liability, contraventional liability and disciplinary liability), as well as its concrete content. It is a necessity also dictated by the fact that, by virtue of the current theory, we are forced to recognize that **public authorities cannot commit *administrative offenses* and, as a result, cannot be held *administratively liable***, which in our opinion is not correct, since the legislation administrative law in force regulates the opposite.

As a consequence, for the reconsideration and reconceptualization of administrative liability as an institution of administrative law, in our opinion, it would be necessary to take into account the following important aspects/marks: *the subjects of liability, the competent court* and *the procedure for bringing liability, the legal and factual basis of liability* and *applicable sanctions.*

In the context, the institution of the *administrative offense* deserves special attention, since, at the moment, in the administrative doctrine, it is not clear what it means (as an act distinct from the *disciplinary offense, the contravention* and *the offense causing damages*) and what form of legal liability can arise for the commission by the public authorities. It is certain, however, that art. 35 of the AC of the Republic of Moldova expressly provide that *"public authorities (...) are responsible (...) for the non-execution or improper execution of the administrative activity, under the law"*. Interpreting the cited norm, it can be found that the non-execution or improper execution of the administrative activity, according to the law, represent illegal administrative acts for which the public authorities and the persons who represent them can and must be held accountable. From the given perspective, we assume that, in its essence, *administrative illegality* can be understood as a deviation from the norms of administrative law and related norms (their violation), committed by

action or inaction by the subject of administrative law in the framework of the administrative activity carried out.

Beyond this clarification, however, we draw attention to the norm in art. 35 of the AC of the Republic of Moldova *("public authorities (...) are responsible, as the case may be, criminal, contraventional, civil or disciplinary for the non-execution or improper execution of the administrative activity, under the law"*), which is affected by a major deficiency. Through the lens of its provision, we ask ourselves rhetorically which form of legal liability can be applied on the basis indicated by the legislator? Or, as far as it's known, criminal, misdemeanour, civil and disciplinary liability have their own legal bases: the crime, the misdemeanour, the civil offense and the disciplinary offense.

In an attempt to solve this dilemma, we will assume that, according to the meaning, on the basis of such a fact the disciplinary liability could arise (and only for civil servants as natural persons), but in this case too, it must not be forgotten that *disciplinary violations* of civil servants are expressly provided by law (in art. 57 of Law no. 158/2008 as a framework law, but also in the special laws that regulate the special status of different categories of civil servants), which makes the ground practically inapplicable for the given form of liability.

So, while the legislator has indicated (in art. 35 of the AC of the Republic of Moldova) a concrete basis for holding the public authorities legally liable, it does not specify what the concrete form of applicable liability would be (since the provisions are inapplicable to these legal subjects and especially on the basis of the indicated basis).

This situation suggests only two solutions: either the *public authorities* cannot be held legally liable, even if they admit "*the non-execution or improper execution of the administrative activity, in accordance with the law"*, or the liability to which the public authorities can be subjected on this basis is one distinct from those stated in art. 35 of the AC of the Republic of Moldova.

The first option, in our opinion, should not be accepted; otherwise we would nullify the principle of legality of administrative activity and the mechanism for ensuring and restoring it. However, under the conditions in which we would accept such a variant, we would find ourselves with an unwanted exception from the principle of equality before the law and justice in the dimension of responsibility for any violation of the law.

As a result, we must recognize the validity of the second option: public authorities are and must be liable to distinct legal liability for *non-execution or improper execution of administrative activity, under the law*. Starting from the indicated basis, which can be seen as a genuine *administrative offense*, in our opinion, the form of legal liability that can be incurred for committing it is the *administrative liability*. In this case, we are not considering administrative liability in its traditional meaning stated above (as liability that includes disciplinary, contraventional and/or patrimonial liability), but administrative liability based on administrative illegality, seen as a deviation from legal norms committed by the subject of administrative law in the administrative activity carried out.

Given the fact that art. 224 of the AC of the Republic of Moldova provides for the negative consequences that may occur in such situations, it can be concluded that the norm in question practically establishes several *administrative sanctions* that can be applied to public authorities by the administrative litigation court [12, p. 353], namely: *cancellation of illegal administrative acts*

issued by them; *establishing the nullity of administrative acts*; *obliging the authority to issue favourable administrative acts; obliging the authority to perform actions or to tolerate actions or inactions.*

It is important to specify that such *sanctions* can only be applied if the illegality of the administrative activity carried out by the public authority is found, activity resulting in the violation of the rights of the administrators. And as a result of this fact, the public authority can be held *patrimonial liable*, obliged to pay compensation for the damages caused by its illegal activity (if the litigant requests it).

In conclusion, it should be emphasized that administrative liability can and must be recognized as an independent form of legal liability, distinct from *contravention liability*, *patrimonial liability* and *disciplinary liability*. This must be understood as a liability of the subjects of administrative law (in particular, public authorities) for violations of the law (illegal acts) admitted in the administrative activity carried out, acts that may harm the rights of the administrators and cause them harm. From the given perspective, starting from the applicable procedure, the subject of its initiation and the competent court, *administrative liability* can be seen as *a liability of public authorities for harming human rights*.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Starting from the **topic** of the doctoral thesis - *"The legal responsibility of the public administration authorities for human rights violation"*, the predetermined **goal**, **the research objectives** drawn, **the research hypothesis** formulated and taking into account the **scientific premises** outlined in chapter 1, as a result of the doctoral study achieved, the following **important scientific results** were obtained according to the two research directions drawn:

I. Infringement of rights through administrative activity as a basis for the legal liability of public authorities:

1.1. One of the principles of the *administrative activity of public administration autho*rities, regulated by the *Administrative Code of the Republic of Moldova* (in art. 35), is *the principle of responsibility*. It is intended to strengthen the obligation of public authorities to respect legality and human rights, by reflecting the negative consequences that may occur in case of violation of these values. It is important that the norm that enshrines it expressly recognizes the quality of public authorities to be liable for legal liability for the *non-execution or improper execution of the administrative activity, in accordance with the law*. However, the norm discussed does not delimit the liability of public authorities from the liability of the persons who represent them, which makes it difficult concretely identify the forms of legal liability that can be applied to public authorities.

1.2. Prior to the entry into force of the *Administrative Code of the Republic of Moldova*, the *administrative act* and *failure to resolve a request within the legal term* were recognized by the legislator as infringements of rights, as only these could be challenged in court. Currently, the administrative legislation admits that damage to these values is possible through any *administrative activity* (normative or individual administrative act, administrative contract, real act and administrative operation), thus recognizing the right of injured persons in all cases to turn to the authorities for protection and in the court of administrative litigation. This aspect is welcome, as it denotes a wider legal-administrative and judicial protection of the rights of individuals in their relations with public authorities [13, p. 267].

1.3. The only problem in this segment continues to be the norm in art. 53 para. (1) of the *Constitution of the Republic of Moldova*, which operates with the old formula, recognizing that the administrative act and the *failure to resolve a request within the legal term* are harmful to rights. Given the progressive character of the *Administrative Code of the Republic of Moldova*, in order to avoid possible unconstitutionality, at the moment, it is necessary to adjust the cited constitutional norm to the administrative legislation in force.

1.4. *The injured right* in the sphere of public administration is essentially a *right violated by administrative activity.* Through such an activity, both the *substantial rights* of citizens and their *procedural rights* as participants in the administrative procedure and the preliminary procedure (rights provided by law) can be damaged/violated.

1.5. *Procedural rights* can be violated by such conduct of public authorities (expressly provided for by the AC of the Republic of Moldova), such as: *abusive exercise of procedural rights* (in bad faith) and *failure to fulfil procedural obligations in good faith*. The form of legal liability in these cases is restorative, as the patrimonial/civil liability (repairing the moral and material damage caused). *Substantial rights*, in turn, can be violated/damaged by: *non-satisfaction (ignorance, non-recognition) by the public authority part*; *cancellation by the public authority or illegal limitation/restriction of its exercise by the authority* [13, p. 267].

1.6. Knowing the *forms/ways of injuring rights through administrative activity* (in other words, harmful administrative conduct) is extremely important and necessary [13, p. 268]. Good knowledge of them contributes substantially and facilitates the justification and argumentation of the *injured right* - an important legal condition both for triggering the administrative appeal before the public authority and, above all, for the admissibility of the action in the administrative litigation court (according to art. 207 paragraph (2) letter e) of the AC of the Republic of Moldova), through which the guilty public authority can be held accountable.

1.7. For the *defence of the rights damaged by the administrative activity*, only the jurisdictional form is applicable (non-jurisdictional form of defence not being allowed), which includes two sub-forms*: administrative* (called in the doctrine administrative appeal, and in the law – *preliminary procedure*) and *judicial* (called *administrative litigation*).

1.8. *The methods of defending the rights damaged by the public authorities* can be deduced from the constitutional text (art. 53 of the *Constitution of the Republic of Moldova*), the provisions of the civil law (art. 16 of the *Civil Code of the Republic of Moldova*) and administrative (art. 162 and art. 206 of the *AC of RM*), and consist of: *cancellation of illegal administrative acts*, including *the finding of nullity of administrative acts* (through which it is possible to obtain the suppression of actions that violate the right or create the danger of its violation or restore the situation prior to the violation of the right etc.); *obliging the authority to issue favourable administrative acts* (through which rights can be recognized, the existence or non-existence of legal relationships established, payment of compensation for damages etc.); *obliging the authority to carry out actions/inactions or to tolerate actions/inactions* (through which the execution of favourable administrative acts can be obtained etc.). The importance of identifying *these methods of defending the rights injured by the authorities* is a special one, since based on them, the concrete forms of legal liability that the public authorities are liable for in cases where they admit abuses in their administrative activity, which harm the rights of the administered citizens, can be outlined.

1.9. The normative regulation of *the methods of defending the rights injured by the authorities* is currently affected by some deficiencies (legal conflicts) that require immediate remediation. It is about the contradiction between the provisions of the civil law and the content of the administrative law in relation to the regulation of such defence methods as: *"Declaration of the nullity of the administrative act"* (art. 17 of *the Civil Code of the Republic of Moldova*) - the grounds provided by the civil law for the declaration of nullity the administrative acts do not correspond to the grounds stipulated by the administrative legislation in this regard; *"Non-application by the court of the act that contravenes the law issued by a public authority"* (art. 16 para. (1) letter j) of the *Civil Code of the Republic of Moldova)* - the meaning of the given rule is interpretable, creates confusion and contravenes the administrative law; *"Repairing the injury"* (art. 16 para. (1) letter g) of the *Civil Code of the Republic of Moldova)* - this method is enshrined in the constitutional and civil norms, but is not expressly provided for in the administrative law (in the article regulating the powers of the court of administrative litigation). The problem is quite serious, because in judicial practice, based on the lack of authorization given, the administrative litigation courts refuse to satisfy the claims for reparation of damages caused by public authorities through illegal administrative activity [14, p. 72-83; 15, pp. 107-118].

The scientific results obtained within this **first direction of research** correspond to 2-4 research objectives, outlined in the *Introductio*n and carried out in *Chapter II* of the paper.

As a result of the obtained scientific results, the following ***ferenda law* proposals** can be formulated: **a)** modification of the provisions of art. 35 of the *AC of the Republic of Moldova* in such a way that the liability of public authorities is clearly delimited from the liability of the persons who represent them, with the concrete specification of the forms of legal liability to which each of these subjects of administrative law are liable**; b)** repeal of art. 17 of the *Civil Code of the Republic of Moldova*, which regulates the "*Declaration of the nullity of the administrative act"* as a method of defending subjective rights, because the grounds provided by it for the declaration of the nullity of administrative acts do not correspond to the grounds stipulated by the administrative legislation in this regard; **c)** revision of art. 16 para. (1) lit. j) from the *Civil Code of the Republic of Moldova* (which provides for "*non-application by the court of the act that contravenes the law issued by a public authority"*), in order to specify the concrete cases in which the courts are allowed to derogate from the rule of enforcement and binding administrative acts, which, as is known, are presumed to be legal until proven otherwise.

II. Forms of legal liability of public authorities for human rights violation:

2.1. *The liability of public authorities for human rights violations* is theoretically and methodologically based on the theory of state liability (in a broad sense), also called *the theory of public power liability* [10, p. 29]. Within it, the institution of the responsibility of public authorities must be clearly delimited from the responsibility of the state. Based on the constitutional text (art. 53 of the *Constitution of the Republic of Moldova*), we find that the state can only be held liable for causing damage to citizens through errors admitted in criminal trials by the exponents of the judicial power and the subjects involved in the execution of the act of justice. If the injury and damage is caused by the exponents of the executive power, the guilty public authority will be liable.

2.2. *The institution of public authorities' liability* must also be clearly delimited from the *public officials liability*, as it is an objective liability while public officials are subject to subjective

liability (based on guilt/fault). Unlike civil servants/officials, *public authorities* are exempt by law from *criminal and contravention liability*. By virtue of their specificity as legal entities under public law or similar structures, public authorities are not subject to disciplinary liability; instead their constitutional review is possible, but only in the relations of constitutional law [11, p. 131].

2.3. Unlike the *liability of the state* and the *liability of civil servants*, as subjects of administrative law, public authorities are subject to two forms of legal liability (including for the violation of human rights): *patrimonial liability* and *administrative liability*.

2.4. *The patrimonial liability* is a distinct form of legal liability (of a civil nature) that can be applied in all branches of law, in the event that damage has been caused within the relations regulated by them, the aim being the damage repair and the restoration of the injured subjective rights. As a result, both *the patrimonial liability of the state* and *the patrimonial liability of public authorities* have a civil legal nature, while the legal regime of their application can be governed in some places by distinct norms of public law, a fact by which they differ from the patrimonial liability applied on the basis of private law norms.

2.5. *The patrimonial liability of public authorities* for the damages caused to those administered by the illegal administrative activity carried out can only be of a *civil nature*, as it is a *reparative liability*. The specificity that this form of legal liability acquires in the matter of administrative law does not allow it to be recognized as a distinct, independent form of legal liability (as is claimed in the doctrine regarding *administrative-patrimonial liability*). In this case, we can only speak of the existence of a distinct legal regime for the application of *patrimonial liability* in the sphere of legal relations regulated by administrative legislation [12, p. 348].

2.6. At the same time, it is necessary to draw a clear demarcation between *the patrimonial liability of the public authorities* in their capacity as subjects of public law, for the damages caused by the administrative activity carried out under the regime of public power (the realization of which is the competence of the administrative litigation courts) and *the patrimonial liability of public authorities* in their capacity as subjects of private law, for the damages caused by the administrative activity to the other participants in the legal relations of private law, therefore outside the regime of public power (the realization of which is the competence of the courts of common law). In essence, the form of legal liability is the same – *patrimonial liability*, the distinction being reduced only to the regime of its application, in one case it is public law, in the other – private law.

2.7. One of the most important dilemmas of the *patrimonial liability of public authorities* resides in the contradiction that exists between the constitutional, administrative and civil norms regarding the obligation to repair damages caused by normative administrative acts. While the *Constitution of the Republic of Moldova* and *the Administrative Code of the Republic of Moldova* implicitly recognize such an obligation for the public authorities, the civil law expressly denies it (by the norm of art. 2007 paragraph (5) of the *Civil Code of the Republic of Moldova*), thus absolving the public authorities by *patrimonial liability* in such cases. Based on the principle of equity, we consider that such exemption from liability must be excluded by abrogating the civil rule that enshrines it.

2.8. The problem of *administrative liability of public authorities* is burdened, at the moment, by three major deficiencies: the definitive doctrinal failure to outline the institution of administrative liability as an independent form of legal liability, the non-recognition of the institution of

administrative liability in administrative legislation (in particular, in art. 35 of *AC of the Republic of Moldova)* and the non-approach in doctrine of public authorities as subjects of administrative liability.

2.9. The most pronounced controversy attested in the administrative doctrine relates to the confusion made between two close legal categories: *administrative liability* (as liability specific to administrative law) and *liability in administrative law* (the forms of legal liability from different branches of law for which the subjects of administrative law are liable). In our opinion, due to this confusion, until now, we cannot talk about the existence of *administrative liability* as a distinct form of legal liability, specific to administrative law.

2.10. *Administrative liability* can and must be recognized as an independent form of legal liability, distinct from *contravention liability, patrimonial liability* and *disciplinary liability.* This should be understood as: the negative consequence provided by the administrative legislation that occurs if the subjects of administrative law violate the law in the administrative activity they carry out; as a liability of the subjects of administrative law (in particular, public authorities) for the violations of the law (illegal acts) admitted in the administrative activity carried out, acts that may harm the rights of the administrators and cause them harm.

2.11. The consolidation of *administrative liability* must focus on the following essential elements*: the subjects of liability, the legal and factual basis of liability, the applicable sanctions, the procedure for holding the liability* and *the competent court*. **Subjects** passable to administrative liability are public authorities and the persons representing them, as subjects of administrative law. **The basis** of this form of liability is the **administrative offense** which involves actions or inactions in violation of the law by the subjects of administrative law in the relations of administrative law (in the administrative activity carried out). **Sanctions** (which can be called *administrative)* for committing *administrative offenses* are coercive measures, expressly provided by administrative legislation, applicable both to civil servants/officials (for example, termination of mandate) and to public authorities. The administrative liability **procedure** and the **competent court** for its application are also expressly provided by the administrative legislation, differing according to the subject of administrative law being held liable.

2.12. As for the *administrative responsibility of the public authorities*, at the moment, this is not reflected at all in the specialized doctrine. Given that the vast majority of administrative doctrinaires recognize that administrative liability includes disciplinary liability and contraventional liability (as forms of subjective liability, based on guilt), grounded on disciplinary misconduct and contravention misconduct, the quality of the public authorities is denied in an indirect form to be the subject passable to *administrative liability*. Contrary to this doctrinal position, we believe that *public authorities* must and can be held *administratively liable*, since the administrative legislation, even if it does not expressly enshrine it (in art. 35 of the *AC of the Republic of Moldova*), nevertheless concretely regulates the grounds, the sanctions, the procedure and the competent court of its application.

2.13. Starting from the general features of *administrative liability*, stated above, we consider that the administrative liability of public authorities has the following particularities: **a)** The **procedure** for holding public authorities to administrative liability is *the administrative litigation procedure*, regulated by the *Administrative Code of the Republic of Moldova* (preceded by *prior*

procedure, except for the cases expressly provided by law), and the **competent court** – the *administrative court*. **b)** The *administrative liability* procedure can be filed both by the public authorities vested with the competence to control the legality and contest illegal administrative acts (*objective litigation*), as well as by the persons injured in their rights by illegal administrative activity (*subjective litigation*). In this last case, the administrative liability of the public authorities represents a genuine liability for the violation of human rights, since one of the mandatory conditions for liability is the proof of the right damaged by the public authority, through its illegal administrative activity. **c)** Such **administrative sanctions** are applicable to *public authorities* as: *annulment of illegal administrative acts; establishing the nullity of administrative acts; the obligation to issue favourable administrative acts; the obligation to carry out certain actions or to tolerate actions or inactions and the pecuniary fine.* Such sanctions can only be applied if the illegality of the administrative activity carried out by the public authority is established, activity resulting in the violation of the rights of the administrators. Only as a result of this fact, the public authority can be obliged to pay compensation for damages caused by its illegal activity. **d)** The stated sanctioning measures can be applied at the request of the injured persons by the public authorities, with the exception of the pecuniary sanction (fine), which can also be ordered ex officio by the administrative litigation court. **e)** *Public authorities* may commit **administrative offenses** in the *administrative activity they carry out*, which may consist in the *non-execution or improper execution of the administrative activity*, in accordance with the law. Beyond this, the law may expressly provide for other illegal acts for which public authorities may be sanctioned. As a result, the administrative offense committed by the public authorities can be both expressly provided by the law and deduced from its rules and the circumstances of each specific case**. f)** *The administrative offense* committed by the public authorities can be harmful to rights and cause damages (material and moral).

2.14. For the commission of *illegal administrative acts*, public authorities can be liable: either the *administrative liability* (with the application of such *sanctions* as: cancellation of illegal administrative acts, declaration of nullity of administrative acts, obliging the authority to issue favourable administrative acts or to certain actions or inactions in the interest to the injured person and the pecuniary fine); or administrative liability together with patrimonial liability (for cases where administrative offenses have caused material or moral damage to the administrators, which are to be repaired at their request). In this last case, we can talk about a liability in administrative litigation, starting from the competent court of liability (administrative litigation court), the procedure for achieving it (administrative litigation procedure) and the forms of legal liability to which it can be brought public authority (*administrative responsibility* and *patrimonial responsibility*). In our opinion, in the first case, it would be good to avoid the expression of liability in *administrative litigation*, in order not to confuse it with the institution of *administrative liability*, which is not clearly outlined in the doctrine anyway.

2.15. The concept of *liability in administrative litigation* is much more complex than was recognized in the specialized literature. This should be understood as two distinct forms of legal liability for which public authorities are liable, in the following sequence: *administrative liability* (in the sense argued above) and *patrimonial liability*. As a result, within the administrative litigation procedure, the court can apply to the defendant public authority administrative sanctions (according

to art. 224 of the *AC of the Republic of Moldova*) and patrimonial sanctions (if the litigant requests it).

The scientific results obtained within **the second research direction** correspond to 5-8 research objectives, outlined in the *Introduction* and carried out in *Chapter III* of the paper.

As a result of the scientific results obtained, the following **proposals for ferenda law** can be formulated: **a)** in order to ensure and guarantee the effective nature of *the patrimonial liability of public authorities* for damages caused by illegal administrative activity, it is necessary to express the power of the administrative litigation court to oblige public authorities for compensation (completion of art. 224 par. (1) of the AC of the Republic of Moldova); **b)** the exclusion/repeal of the civil rule (art. 2006 paragraph (5) of the *Civil Code of the Republic of Moldova*) that exempts public authorities from patrimonial liability for damages caused by normative acts; **c)** express legal consecration, in the content of art. 35 of the AC of the Republic of Moldova, on the *administrative responsibility* of public administration authorities.

Summing up, it can be concluded that, through the completed doctoral study, it was made a considerable contribution to the development of the science of administrative law, expressed in particular by: the delimitation of the legal responsibility of public administration authorities from the legal responsibility of the state and civil servants (chap. 3, section 3.1.); identification of the concrete forms of legal liability to which the public administration authorities are liable, including human rights violation (chapter 3, section 3.2.); arguing the civil nature of the patrimonial liability of public authorities (chap. 3, section 3.3.); outlining the theory of administrative liability as a distinct form of legal liability and identifying the particularities of the administrative liability of public administration authorities (chap. 3, section 3.4.); identification of ways of harming human rights by public authorities, the forms and methods of their defence (chap. 2, section 2.2.-2.4.); outlining the mechanism for holding the public administration authorities to legal responsibility - the preliminary procedure and the administrative litigation, including human rights violation (chap. 2, section 2.4.); the analysis of the legislation in the field, the identification of deficiencies and proposal of solutions for remediation and optimization (chapters 2 and 3).

Recommendations for further scientific research. Starting from the identified scientific premises and taking into account the scientific results obtained, we further consider it necessary to deepen the studies on such legal institutions as: *administrative activity*, on all its four dimensions[11], in order to develop a fundamental theory that serves as relevant guide and concrete guideline for the correct qualification of the *forms of public authorities manifestation* (*administrative activity* forms), which should guide the administration, citizens, as well as the courts in the process of defending the rights injured by the public authorities and their legal liability; the *patrimonial liability of public authorities* in order to scientifically substantiate the need of the normative consecration of the mechanism for its realization in the administrative legislation; *administrative liability*, as at the moment it is not clearly outlined in the doctrine and delimited by other forms of legal liability that public administration authorities may be liable for; *the preliminary procedure* and the *administrative*

[1] [1] **ȘEVCENCO, I.** *Vătămarea drepturilor omului prin activitate administrativă: concept și particularități.* Op. cit., p. 266.

litigation as elements of the mechanism of holding the public administration authorities to legal responsibility for the violation of human rights.

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2. **ȘEVCENCO, I.** *Răspunderea juridică a autorităților publice: premise teoretico-normative, particularități și forme.* În: Intellectus, 2023, nr. 1, pp. 124-136. Categoria B. ISSN 1810-7087
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5. **ȘEVCENCO, I.** *Răspunderea patrimonială a autorităților publice.* În: Anale ştiinţifice ale Academiei „Ștefan cel Mare" a MAI al RM, Științe Juridice, nr. 16, Chișinău, 2023, pp. 336-356. ISBN 978-9975-170-00-0 (PDF).
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ADNOTARE

Șevcenco Igor *Răspunderea juridică a autorităților administrației publice pentru vătămarea drepturilor omului.* Teză de doctor în drept. Specialitatea: 552.02 – Drept administrativ.

Chișinău, 2024

Structura tezei: introducere, trei capitole, concluzii generale și recomandări, bibliografie din 330 de titluri, 168 pagini de text științific. Rezultatele ştiinţifice sunt publicate în 7 lucrări ştiinţifice.

Cuvinte-cheie: administrație publică, autoritate publică, răspundere juridică, răspunderea autorităților publice, răspunderea statului, răspundere administrativă, răspundere patrimonială, răspundere civilă, răspundere în contencios administrativ, activitate administrativă, procedură administrativă, recurs administrativ, procedură prealabilă, cerere prealabilă, contencios administrativ, ilicit administrativ, sancțiune administrativă, drept vătămat, respectarea drepturilor omului, vătămarea drepturilor omului, prejudiciu, repararea prejudiciului.

Scopul studiului: analiza doctrinei de specialitate și a legislației în vigoare în materia *respectării drepturilor omului în activitatea administrativă* și *răspunderii juridice a autorităților administrației publice* în vederea identificării și argumentării formelor concrete de răspundere juridică a acestor subiecți, în mod special *pentru vătămarea drepturilor omului*, identificarea lacunelor și carențelor doctrinare și normative, urmărindu-se într-un final consolidarea teoriei juridice în materie și optimizarea cadrului juridic aferent.

Obiectivele cercetării: evaluarea și aprecierea gradului de cercetare teoretică a problemei garantării *respectării drepturilor omului în activitatea administrativă*, precum și a *răspunderii autorităților administrației publice*, inclusiv pentru *vătămarea drepturilor omului*; analiza cadrului normativ în vigoare în vederea aprecierii modului de reglementare și nivelului de garantare a *respectării drepturilor omului* ca principiu fundamental al administrației publice; analiza esenței și formelor *activității administrative* în vederea identificării și argumentării modalităților de *vătămare a drepturilor omului* de către autoritățile publice prin activitatea administrativă desfășurată; identificarea și argumentarea formelor și metodelor de apărare a *drepturilor vătămate de autoritățile publice* ca premisă necesară pentru tragerea la răspundere juridică a acestora; analiza instituției *răspunderii juridice în dreptul public*, în vederea delimitării *răspunderii juridice a statului* de *răspunderea juridică a autorităților publice* (inclusiv, de *răspunderea juridică a funcționarilor publici*); identificarea și analiza *formelor de răspundere juridică* de care sunt pasibile *autoritățile publice*, inclusiv pentru vătămarea drepturilor omului; analiza *răspunderii patrimoniale* a autorităților publice pentru prejudicierea administraților în vederea argumentării naturii *patrimoniale* (civile) a acesteia (expres prevăzută de lege) în detrimentul naturii sale *administrative* (susținută de doctrina administrativă); analiza *răspunderii administrative*, în baza esenței, particularităților și elementelor acesteia, în vederea argumentării existenței unei veritabile *răspunderi administrative a autorităților publice* ce survine în cazurile în care acestea încalcă legea în activitatea administrativă desfășurată, fapt prin care poate vătăma și drepturile administraților.

Noutatea şi originalitatea ştiinţifică: sunt determinate de faptul că în lucrare (unică la moment din perspectiva tematicii abordate): sunt puse în discuție unele aspecte puțin cercetate în doctrină cum ar fi: instituția *răspunderii juridice a autorităților publice* în general, instituția *răspunderii administrative* (detașată de răspunderea disciplinară, contravențională și patrimonială), instituția *ilicitului administrativ* (separat de contravenție și abaterea disciplinară) etc.; sunt interpretate și analizate dispozițiile unor acte normative recent intrate în vigoare, cu impact asupra instituției *răspunderii administrative*; se argumentează propria viziune asupra *răspunderii patrimoniale a autorităților publice;* se propune recunoașterea existenței *răspunderii administrative a autorităților publice* (inclusiv, *pentru vătămarea drepturilor omului*) cu *sancțiuni administrative* distincte; se demonstrează necesitatea circumscrierii *răspunderii patrimoniale* și *răspunderii administrative a autorităților publice pentru vătămarea drepturilor omului* în conceptul de *răspundere în contenciosul administrativ*.

Rezultatele obținute care contribuie la soluționarea unor probleme științifice importante: rezidă în fundamentarea teoriei *răspunderii juridice a autorităților publice pentru vătămarea drepturilor omului,* fapt ce a permis identificarea formelor concrete de răspundere juridică de care sunt pasibili acești subiecți de drept public (*administrativă* și *patrimonială*), precum și clarificarea procedurii și sancțiunilor aplicabile pentru vătămarea drepturilor omului, momente indispensabile creării bazei teoretice necesare pentru cunoașterea domeniului și, ca urmare, optimizarea legislației aferente și a mecanismului de aplicare eficientă a acesteia.

Semnificația teoretică: Rezultatele obținute sunt benefice dezvoltării teoriei dreptului administrativ și a contenciosului administrativ ca principal instrument de apărare a drepturilor omului vătămate de autoritățile publice.

Valoarea aplicativă: Lucrarea poate servi ca un reper orientativ și sursă științifică pentru cercetarea ulterioară a problemei abordate, precum și în procesul didactic ca suport teoretic pentru cursurile de specialitate.

Implementarea rezultatelor științifice: Rezultatele obținute pot fi utilizate la revizuirea legislației în domeniu, interpretarea corectă a acesteia în vederea aplicării eficiente, precum și la optimizarea mecanismului de tragere la răspundere juridică a autorităților publice pentru vătămarea drepturilor omului în cadrul contencosului administrativ.

ANNOTATION

Shevchenco Igor: ***The legal liability of public administration authorities for human rights violations.*** **Thesis of PhD in law. Specialty: 552.02 – Administrative law. Chisinau, 2024**

Thesis structure: introduction, three chapters, general conclusions and recommendations, bibliography made up of 330 titles, 168 pages of basic text, statement of responsibility, the author's CV. The scientific results are published in 7 scientific works.

Keywords: public administration, public authority, legal liability, public authorities liability, state liability, administrative liability, patrimonial liability, civil liability, liability in administrative litigation, administrative activity, administrative procedure, administrative appeal, prior procedure, prior request, administrative litigation, illegal administrative, administrative sanction, damaged right, respecting human rights, injuring human rights, damage, damage repair.

The purpose of the study: the analysis of the specialized doctrine and the legislation in force in the matter of respecting human rights in the administrative activity and the legal liability of public administration authorities in order to identify and argue the concrete forms of legal liability of these subjects, especially for the violation of human rights, identification of doctrinal and normative gaps and deficiencies, aiming to consolidate the legal theory in the matter and optimize the related legal framework.

The objectives pursued are: evaluation and appreciation the degree of theoretical research on the issue of guaranteeing respecting human rights in administrative activity, as well as the responsibility of public administration authorities, including the violation of human rights; the analysis of the normative framework in force in order to assess the mode of regulation and the level of guarantee to respect human rights as a fundamental principle of public administration; analysis of the essence and forms of administrative activity in order to identify and argue the ways of harming human rights by public authorities through the administrative activity carried out; identifying and arguing the forms and methods of defending the rights injured by the public authorities as a necessary premise for holding them legally liable; analysis of the institution of legal liability in public law, in order to delimit the legal liability of the state from the legal liability of public authorities (including the legal liability of civil servants); identification and analysis of the forms of legal liability of public authorities for the violation of human rights: administrative liability and patrimonial liability; analysis of the patrimonial liability of public authorities for prejudicing administrators in their administrative activity in order to argue its patrimonial (civil) nature (expressly provided by law) to the detriment of its administrative nature (supported by administrative doctrine); the analysis of administrative liability, based on its essence and particularities, as well as the administrative illegality, in order to argue the existence of a genuine administrative liability of public authorities that arises in cases where they violate the law in the administrative activity carried out, a fact that can harm the rights administrators.

Novelty and scientific originality: they are determined by the fact that in the work (currently unique from the perspective of the topic discussed) some aspects a few researched in the doctrine, such as: the institution of legal responsibility of public authorities in general, the institution of administrative responsibility (detached of disciplinary and patrimonial liability), the institution of administrative illegality (separate from contraventional illegality and disciplinary misconduct) etc.; the provisions of some normative acts recently entered into force or which are about to enter into force are interpreted and analyzed; one's own vision on the patrimonial responsibility of public authorities is argued; it is proposed to recognize the existence of administrative liability of public authorities (including, the violation of human rights) with distinct administrative sanctions; the need to circumscribe the patrimonial liability and the administrative liability of public authorities for the violation of human rights in the concept of liability in administrative litigation is demonstrated.

The obtained results that contribute to the solution of some important scientific problems: reside in the substantiation of the theory of legal liability of public authorities for the violation of human rights, a fact that allowed the identification of the concrete forms of legal liability to which these subjects of public law (administrative and patrimonial) are liable, as well as clarifying the applicable procedure and sanctions for the violation of human rights, indispensable moments for creating the theoretical basis necessary for knowledge of the field and, as a result, optimizing the related legislation and the mechanism for its effective application.

Theoretical significance: The results obtained are beneficial to the development of the theory of administrative law and administrative litigation as the main tool for the defence of human rights violated by public authorities.

Applicative value: The work can serve as an orientation landmark and scientific source for further research on the addressed problem, as well as in the didactic process as theoretical support for specialized courses.

Implementation of the scientific results: The obtained results can be used for the revision of the legislation in the field, the correct interpretation for effective application, as well as for the optimization of the mechanism of holding public authorities to legal responsibility for the violation of human rights in the administrative litigation.

АННОТАЦИЯ

Шевченко Игорь: *Юридическая ответственность органов публичного управления за нарушения прав человека.*
Докторская диссертация по юриспруденции. Специальность: 552.02 – Административное право.
Кишинев, 2024 г.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография состоит из 330 источников, 168 страниц научного текста, заявление об ответственности, CV автора. Научные результаты опубликованы в 7 научных статьях.

Ключевые слова: публичное управление, орган публичной власти, юридическая ответственность, ответственность органов публичной власти, ответственность государства, административная ответственность, имущественная ответственность, гражданско-правовая ответственность, ответственность в административном судопроизводстве, административная деятельность, административное производство, обжалование в кассационном порядке, предварительное производство, предварительное заявление, административное судопроизводство, административный проступок, административные санкции, нарушенное право, соблюдение прав человека, нарушение прав человека, ущерб, возмещение ущерба.

Цель исследования: анализ доктрины и действующего законодательства *в вопросах соблюдения прав человека в административной деятельности и юридической ответственности органов публичного управления* с целью выявления и обоснования конкретных форм юридической ответственности данных субъектов, особенно *в отношении нарушения прав человека*, выявление доктринальных недостатков и законодательных пробелов, в конечном итоге с целью укрепления правовой теории в этом вопросе и оптимизации соответствующей правовой базы.

Задачи исследования: определение и оценка степени теоретической разработанности *вопроса обеспечения соблюдения прав человека в административной деятельности*, а также *ответственности органов публичного управления*, в том числе за *нарушение прав человека*; анализ действующей законодательства для оценки способа регулирования и уровня гарантии *соблюдения прав человека* как основополагающего принципа публичной администрации; анализ сущности и форм *административной деятельности* в целях выявления и аргументации способов *нарушения прав человека органами публичной власти* посредством осуществляемой административной деятельности; выявление и аргументация форм и методов защиты прав, ущемленных органами публичной власти, как необходимая предпосылка привлечения их к юридической ответственности; анализ института юридической ответственности *в публичном праве*, с целью разграничения *юридической ответственности государства* от *юридической ответственности органов публичной власти* (в том числе юридической ответственности государственных служащих); выявление и анализ *форм юридической ответственности* органов публичной власти за нарушение прав человека: *административная ответственность* и *имущественная ответственность*; анализ *имущественной ответственности* органов публичной власти за нанесение ущерба органами публичной власти административной деятельностью с целью аргументации ее имущественного (гражданского) характера (прямо предусмотренного законом) в ущерб ее административному характеру (подтверждаемому административной доктриной); анализ *административной ответственности*, исходя из ее сущности и особенностей, а также административного проступка, с целью аргументации существования закономерной *административной ответственности органов публичной власти*, возникающей в случаях нарушения ими закона при осуществлении административной деятельности, то, что может навредить правам человека.

Научная новизна и оригинальность: определяются тем, что в предлагаемой работе (единственной в своем роде исходя из перспективы предлагаемой темы): обсуждаются малоисследованные в доктрине аспекты, такие как: институт *юридической ответственности органов публичной власти* в целом институт *административной ответственности* (отдельно от дисциплинарной и имущественной ответственности), институт административного проступка (отдельно от правонарушений и дисциплинарных проступков) и др.; интерпретируются и анализируются положения некоторых недавно вступивших в силу нормативных актов или которые должны вступить в силу; аргументировано собственное видение имущественной ответственности органов *публичной власти*; предлагается признать наличие административной ответственности органов публичной власти (в том числе *за нарушение прав человека*) отдельными *административными санкциями*; показана необходимость разграничения *имущественной и административной ответственности органов публичной власти за нарушение прав человека* в понятии *ответственности в административном судопроизводстве*.

Полученные результаты способствуют решению ряда важных научных задач: заключаются в обосновании теории *юридической ответственности органов публичной власти за нарушение прав человека*, что позволило выявить конкретные формы юридической ответственности, к которым эти ответственности субъектов публичного права (административной и имущественной), а также уточнение применимой процедуре и санкций в случае нарушения прав человека, незаменимых элементов для создания теоретической базы, необходимой для познания в данной области и, как следствие, оптимизации связанных с ней законодательством и механизм его эффективного применения.

Теоретическая значимость: Полученные результаты полезны для развития теории административного права и административного судопроизводства как основного инструмента защиты прав человека, нарушаемых органами публичной власти.

Прикладное ценность работы: Работа может служить как ориентиром так и научным источником для дальнейших исследований по рассматриваемой проблеме, а также в учебном процессе в качестве теоретического обеспечения специализированных курсов.

Внедрение научных результатов: Полученные результаты могут быть использованы для пересмотра законодательства в данной сфере исследования, правильной интерпретации для эффективного применения, а также для оптимизации механизма привлечения органов публичной власти к юридической ответственности за нарушение прав человека в административном судопроизводстве.

SHEVCHENKO IGOR

THE LEGAL LIABILITY OF PUBLIC ADMINISTRATION AUTHORITIES FOR HUMAN RIGHTS VIOLATIONS

SPECIALITY: 552.02. Administrative Law

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